IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.2633 OF 2005
IN
CRIMINAL APPEAL NO. 1340 OF 2004

Jafar @ Jafar Chikna Mahmodalli Deshmukh ... Applicant

V/s

The State of Maharashtra & Anr. ... Respondent

Shri A.H.H.Ponda for the applicant
Shri.D.P.Adsule,APP for the State.

Coram : V.M. Kanade, J.

Dated : 28/04/2005.

P.C. :-

1 Heard the learned counsel for the applicant and the learned APP for the State.

2 The applicant was convicted by the trial court for an offence punishable under section 307 read with section 34 of the Indian Penal Code and was sentenced to suffer R.I. for 5 years.

3 It is submitted by the learned counsel appearing on behalf of the applicant that application for bail was rejected by this court on 8/12/2004. It is further submitted that liberty was granted to the applicant to apply for bail again if the appeal is not heard within

reasonable period of

time. The learned counsel has taken me to evidence of witness and has submitted that the present applicant/original accused No.3 had not participated in the said incident and had not assaulted the complainant. He has submitted that only one eye witness had stated that the present applicant had pushed the complainant. He has submitted that appeal is not likely to be heard for some time and the applicant has already undergone one year of sentence. He has submitted that under the facts the applicant be released on bail.

4 The learned APP for the State has vehemently opposed the application for bail. He has submitted that this court has rejected the earlier application for bail on 8/12/2004 on merits . He has submitted that knife was recovered at the instance of present applicant and his presence has been proved by the eye witnesses who have stated that he was present when the accused Nos. 1 and 2 were assaulted the complainant.

5 From the copies of deposition which are annexed to the application it can be seen that the only role attributed to this applicant by the eye witnesses is that he was present at the scene of offence along with other accused. One of the witness has stated that the accused is a resident of said locality. Though there is a recovery of

knife at the instance of accused, none of eye witnesses have

stated that the accused No.3 was carrying knife with him or had used knife for assaulting the complainant. In view of these facts and circumstances, in my view the applicant is entitled to release on bail. The applicant is, therefore, released on bail in a sum of Rs.5000/-. He shall report to R.A.K. Marg Police Station once in a month.

(V.M. Kanade, J.)